

## REMARKS/ARGUMENTS

Applicant has reviewed and considered the non-final Office action mailed on May 18, 2007, and the references cited therewith. Claims 1, 2, 4, 5 and 7 are now pending in this application, and all pending claims stand rejected as set forth in the Office Action.

Applicant respectfully traverses the rejections and, based on the remarks below, respectfully requests reconsideration and allowance of claims 1, 2, 4, 5 and 7.

### Claim Rejections – 35 U.S.C. § 103

Claims 1, 2, 4, 5 and 7 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,071,267 (Zamierowski) in view of U.S. Patent No. 5,344,455 (Keogh). Applicant respectfully traverses these rejections.

Claim 1 is allowable because none of the cited references, alone or in combination, teach or suggest a method for promoting wound healing having all of the claimed limitations. Among other things, none of the references teaches or suggests *grafting wound healing factors into a porous pad* of a negative pressure system. The Office Action admits that Zamierowski does not disclose the limitation of grafting wound healing factors into the pad, but then alleges that Keogh does so by disclosing grafting a bioactive agent such as a growth factor onto a polymeric substance. This is incorrect. Keogh has two deficiencies that prevent the reference from teaching or suggesting the grafting step as alleged by the Office Action. First, Keogh does not teach grafting of a *wound healing factor*. Second, Keogh only teaches indirect bonding between a bioactive agent and a blood-contacting article, and thus does not teach or suggest grafting wound healing factors *into* the porous pad.

Keogh discloses grafting a polymer coating onto a polymer surface of a blood-contacting article, and then subsequently bonding a bioactive

substance to the polymer coatings. In most examples cited by Keogh, bioactive agents are ionically bonded to the polymer coating after that coating is grafted to the surface of the article. In the only examples cited involving growth factors, Keogh discloses that the growth factor is ionically bonded to a charged hydrophilic polymer that has been previously grafted to the article. In contrast, claim 1 requires *grafting* the wound healing factor into the porous pad. Grafting of the wound healing factor assists in resisting removal of the wound healing factor by the reduced pressure applied into the porous pad. Since ionic bonds are not as strong as the covalent bonds formed during grafting, the advantages offered by the method of claim 1 are clear.

As previously mentioned, Keogh only teaches indirect bonding between a bioactive agent and a blood-contacting article. Each of the bioactive agents disclosed in Keogh are bound to a polymer coating that is first applied to the article. The bioactive agents, and more importantly the growth factors, taught by Keogh are not bound directly to the article. Consequently, Keogh does not teach grafting wound healing factors *into* the porous pad as required by claim 1.

Claim 1 is also allowable because the Office Action has not met the burden placed on the Office of demonstrating with articulated reasoning that a person having ordinary skill in the art would have an apparent reason to combine the teachings of Zamierowski with the teachings of Keogh such that the Applicant's claim as a whole is unpatentable. See *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007).

The Office Action makes no factual finding on "the scope and content of the prior art," ascertaining the "differences between the prior art and the claims at issue," or resolving "the level of ordinary skill in the pertinent art." See *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966); *In re Zurko*, 258 F.3d 1379, 1383-84 (Fed. Cir. 2001). The Office Action merely alleges that a person having ordinary skill in the art would have been motivated to combine the teaching of Zamierowski with those of Keogh "for the benefits

that Keogh teaches.” (Office Action at 3.) As set forth in the Office Action, such benefits consist of “use in blood-contacing [sic] polymeric surfaces that do not promote red cell destruction and coagulation of blood.” (Id.) The Office Action does not articulate how or why a person having ordinary skill in the art of treating wounds would be motivated by these “benefits.” Such broad conclusory statements of suggestion or motivation standing alone are not sufficient to satisfy the burden placed on the Office. See *KSR*, 127 S. Ct. at 1741 (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)). The Examiner appears to be engaging in impermissible hindsight, *In re Rouffet*, 149 F.3d 1350, 1357-58 (Fed. Cir. 1998), evaluating the invention “part by part,” using the invention as a “roadmap to find its prior art components.” *Princeton Biochemicals, Inc. v. Beckman Coulter, Inc.*, 411 F.3d 1332, 1337 (Fed. Cir. 2005).

Notwithstanding the deficiencies in the rejection itself, one of ordinary skill in the art of wound healing would not be motivated to consider Keogh for its teachings related to grafting. Keogh addresses problems in the art of implantable medical devices, not the art of wound healing. Consequently, it is not in the same field of endeavor as the Applicant’s method for promoting wound healing and may not be relied upon under § 103. See, e.g., *In re Clay*, 966 F.2d 656 (Fed. Cir. 1992).

For the reasons stated above, Applicant respectfully requests withdrawal of the rejection under 35 U.S.C. § 103 of claim 1 and its dependents.

**CONCLUSION**

If a Petition for Extension of Time under 37 C.F.R. 1.136(a) is required, the petition is herewith made. The Commissioner is authorized to charge any fees that may be required, or credit any overpayment made with this Office Action, to Deposit Account Number 50-0326.

In light of all the foregoing, believing that all things raised in the Office Action have been addressed, Applicant respectfully requests reconsideration of the prior rejections and objections, as well as allowance of the claims and passage of the application to issue. If the Examiner would care to discuss any remaining matters by phone, Applicant invites the Examiner to contact the undersigned at 214.758.6641.

Respectfully submitted,

  
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